

¹ The Board notes that, following the December 16, 2019 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$645.60 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

OWCP accepted that on June 13, 1989 appellant, then a 59-year-old clerk, sustained injuries to his back as a result of a motor vehicle accident that occurred while in the performance of duty. He worked limited duty. OWCP accepted appellant's claim for displacement of lumbar intervertebral disc without myelopathy and lumbar sprain.

Appellant stopped work on October 9, 2009 because no work was available. He then filed claims for wage-loss compensation (Form CA-7). OWCP paid appellant wage-loss compensation on the supplemental rolls beginning March 6, 2010 and on the periodic rolls beginning October 24, 2010.

On October 11, 2019 SSA provided OWCP with a Federal Employees Retirement System (FERS)/SSA dual benefit calculation worksheet. The SSA representative provided corresponding monthly SSA age-related retirement benefit rates beginning January 2010, both with and without FERS contributions. With FERS, appellant was entitled to monthly SSA rates of \$2,119.30 effective January 2010; \$2,195.50 effective December 2011; \$2,232.80 effective December 2012; \$2,266.20 effective December 2013; \$2,304.70 effective December 2014 and 2015; \$2,311.50 effective December 2016; \$2,357.70 effective December 2017; and \$2,423.60 effective December 2018. Without FERS, appellant was entitled to monthly SSA rates of \$1,678.70 effective January 2010; \$1,739.10 effective December 2011; \$1,768.60 effective December 2012; \$1,795.10 effective December 2013; \$1,825.60 effective December 2014 and 2015; \$1,831.00 effective December 2016; \$1,867.60 effective December 2017; and \$1,919.80 effective December 2018.

OWCP completed a FERS offset calculation worksheet on October 23, 2019. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$55,387.85.

Beginning October 13, 2019, OWCP paid appellant at the adjusted amount of \$2,582.41 to include the offset of his SSA age-related retirement benefits attributable to his federal service.

In a letter dated October 23, 2019, OWCP advised appellant that it was adjusting his compensation to offset the portion of his SSA age-related retirement benefits attributable to his federal service. It informed him that he would receive net compensation of \$2,582.41 every 28 days beginning November 9, 2019.

In a preliminary overpayment determination dated November 6, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$55,387.85 because it had failed to reduce his wage-loss compensation benefits for the period January 1, 2010 through October 12, 2019 by the portion of his SSA benefits that were attributable to federal service. It further advised him of its preliminary determination that he was not at fault in the

creation of the overpayment. OWCP provided appellant an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified him that within 30 days of the date of the letter he could request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing. No response was received.

In a memorandum of a telephone call (Form CA-110) dated November 18, 2019, appellant informed OWCP that he did not receive the letter dated October 23 or November 6, 2019. He explained that he was having many problems receiving his mail and had complained to the employing establishment. The claims examiner advised appellant that he would send another copy of the October 23 and November 6, 2019 letters.

By decision dated December 16, 2019, OWCP finalized the preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$55,387.85 for the period January 1, 2010 through October 12, 2019 because he received SSA age-related retirement benefits in addition to his wage-loss compensation benefits under FECA without proper offset. It also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not completed and returned OWCP's Form OWCP-20. OWCP required recovery of the overpayment by deducting \$645.60 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.² Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.³

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁴ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁵

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁵ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without appropriate offset.

As noted, a claimant cannot receive concurrent FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service.⁶ The evidence of record has established that appellant received SSA age-related retirement benefits that were attributable to his own federal service during a period of time that he received FECA wage-loss compensation. The Board finds that fact of overpayment, therefore, is established.

The Board further finds, however, that OWCP improperly calculated the amount of the overpayment for the period January 1, 2010 through October 12, 2019.

The evidence of record indicates that appellant did not receive wage-loss compensation benefits in this claim until March 6, 2010. Consequently, the SSA benefits he received prior to March 6, 2010, during which he was not receiving FECA wage-loss compensation, were not dual benefits and should not have been included in the overpayment calculation. OWCP improperly calculated appellant's overpayment based on his dual SSA and FECA benefits beginning January 1, 2010 rather than the appropriate date of March 6, 2010.⁷

A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.⁸ The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the amount of the overpayment has not been established.

On remand, OWCP shall determine the exact amount of the overpayment of compensation and the correct dates during which the overpayment occurred. It should then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial information. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without appropriate offset. The Board further finds however, that the case is not in posture for decision regarding the amount of the overpayment.

⁶ *Id.* See also *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ See *S.M.*, Docket No. 20-0152 (issued August 10, 2020); *L.B.*, Docket No. 19-1322 (issued January 27, 2020).

⁸ *L.B.*, Docket No. 19-1322 (issued January 27, 2020); *A.J.*, Docket No. 18-1152 (issued April 1, 2019); *J.W.*, Docket No. 15-1163 (issued January 13, 2016); see also *O.R.*, 59 ECAB 432 (2008) (with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated).

⁹ Given the disposition of issue 1, the issues of waiver and recovery of the overpayment are moot.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. This case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 15, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board